

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of San Diego
Gas & Electric Company (U 902-E) for a
Certificate of Public Convenience and Necessity
for the Sunrise Powerlink Transmission Project

Application No. 05-12-014
(Filed December 14, 2005)

Application No. 06-08-010
(Filed August 4, 2006)

**SUPPLEMENT TO MOTION OF SAN DIEGO GAS & ELECTRIC COMPANY
(U 902-E) FOR AUTHORITY TO SUBMIT AND MAINTAIN CONFIDENTIAL,
COMMERCIALLY SENSITIVE, PROPRIETARY INFORMATION UNDER
SEAL, AND FOR A PROTECTIVE ORDER**

E. Gregory Barnes

Attorney for
SAN DIEGO GAS & ELECTRIC COMPANY
101 Ash Street
San Diego, California 92101
Telephone: 619/699-5019
Facsimile: 619/699-5027
E-Mail: gbarnes@sempra.com

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**I.
INTRODUCTION**

Pursuant to the presiding administrative law judge's ruling at the September 13, 2006 prehearing conference in the above-captioned matter (Transcript ("T.") at 190-91), San Diego Gas & Electric Company ("SDG&E") hereby supplements the motion for a protective order filed concurrently with the amended application on August 4, 2006 ("motion").

A. SDG&E's August 4 motion

The August 4 motion requests an order (1) granting leave to submit under seal the confidential and proprietary portions of Volume 2 of the above application, the Sunrise Powerlink Purpose and Need report ("Report"), and (2) for adoption of a protective order to govern access to and use by intervenors of protected information that may subsequently be produced by SDG&E, and by other parties in this proceeding.¹

¹ The August 4 motion sought relief under the authority of Commission Rule 45, Public Utilities Code §§ 454.5(g) and 583, General Order 66-C, and Decision ("D.") 06-06-066.

With respect to the material filed under seal, the motion seeks to protect a small amount of confidential information in the Report concerning RPS contracts in current negotiations, or are part of SDG&E's 2005 and 2006 RPS Request for Offers ("RFO") "short list," which have taken place in R.04-04-026 and its successor proceeding, R.06-05-027. The motion argues that the redacted matter is confidential procurement information protected generally by Pub. Util. Code § 454(g), and specifically by the Investor Owned Utility ("IOU") Matrix attached to D.06-06-066 as Appendix 1. SDG&E redacted a total of 12 items in Chapter III of the Report related to its RPS procurement efforts. In addition, SDG&E redacted one four-page table in Appendix V of the Report containing detailed cost estimates for the project on grounds that access to such proprietary estimates could give an advantage in formulating bids for project work or equipment.

All parties were served with the Report with the RPS-related items redacted (*i.e.*, blacked out) and the four-page table omitted. Concurrently with the motion, SDG&E filed the unredacted version of the Report with the Commission pursuant to Section 583, General Order 66-C, and D.06-06-066.

In addition, the motion requests that the provisions of the Proposed Protective Order ("Protective Order") and Non-Disclosure Certificate, attached to the motion respectively as Appendices A and B, govern access to and the use of certain confidential RPS procurement and construction cost information in this proceeding.² If the Commission adopts the Protective Order, SDG&E will also provide the unredacted

² The Protective Order is based on the May, 9 2005 ALJ ruling in Rulemaking ("R.") 04-04-004/R.04-04-025, one of the model orders under consideration in Phase 2 of R.05-06-040. The model protective order has been modified to include protection of certain construction cost information, as discussed in Section III of the motion.

testimony on request to those eligible under that Protective Order who agree to abide by the protections set forth therein.

No party responded to the motion, or otherwise objected to the motion's requests for confidentiality. Indeed, since August 4, SDG&E has made available an unredacted version of the Report, together with certain other confidential information requested in discovery, to two intervenors, UCAN and RPCC, and who have executed confidentiality agreements with SDG&E.

B. The presiding judge's ruling at the September 13 PHC.

The presiding judge requested that SDG&E supplement the motion in three ways. First, he asked for "a log that sets forth the items that fit within ... [the] request." T. at 190. Second, he asked that SDG&E provide the information specified in Ordering Paragraphs 2 and 13 of D.06-06-066. Third, he asked SDG&E to address how SDG&E's motion as it relates to the RPS materials satisfies the language in the executive summary of that decision stating that "information related to renewable energy procurement must meet a higher burden in order to be protected." *Id.*, at 191.³

³ The following sets forth the entirety of the presiding judge's ruling (T. 190-91):

The first thing I need to have a clear identification of exactly what words and what documents you want to have protected. So for starters, I need to have a log that sets forth the items that fit within your request. And then to review the decision that I just cited, you're going to find a couple of places where the Commission set forth its interest in terms of the information we'd like to have provided to support this kind of a request. Both within the ordering paragraphs and within the -- look specifically at Ordering Paragraph No. 2 in that regard. And then in Ordering Paragraph 13, there's a reference to a more detailed request process that would -- is being considered in Phase 2 of proceeding. The items that are in that process appear to me to be very logical and I'd like to ask you to please follow them here as well. It talks about the fact that an item is covered in the matrix that was identified and approved in that decision that specifically identify why the data (... *footnote continued to next page*)

II.

COMPLIANCE WITH THE PRESIDING JUDGE's RULING

A. The requested log and D.06-06-066 Matrix information and ordering paragraph requirements.

Below, SDG&E sets forth the log and the requested information related to the IOU Matrix in D.06-06-066:

Location Page and line	Description	IOU matrix item
III-3, line 9	2005 RFO wind offer quantity	VIII.A.
III-3, lines 22-23 (two items)	2005 RFO pending negotiations – counter-party location and total quantity	VIII.A.
III-6, n.6	2005 RFO short-list offer quantity by type	VIII.A.
III-11, lines 16-17, 19 and nn.13-14 (five items)	SES contract incremental delivery schedules	VII.F.
III-12, line 1	SES contract incremental delivery schedule	VII.F.
III-12, lines 7-8	Esmeralda contract site information	VII.F.
III-12, line 19	2005 RFO negotiations - quantity and resource type	VIII.A.
Appendix V	Project detailed capital cost estimate breakdown	N/A

In addition, the presiding judge asked SDG&E to address the criteria of Ordering Paragraph 2, which requires the movant seeking protection to prove:

(... footnote continued from previous page) should be kept under seal, which item on the matrix is reflecting that type of data, identifying appropriate procedures short of submitting entire documents under seal for dealing with that. I note that that may not be a big issue with this particular request because you really have not sought to have entire documents placed under seal in this instance. And there are a couple of other procedural items set forth there. Another thing I want to bring to your attention is the fact that in the executive summary of the decision, it specifically states that information related to renewable energy procurement must meet a higher burden in order to be protected. And so I need your help, because in this instance you have requested to have some information related to renewable procurement protected. I need to have your help in understanding how it would be a more substantial burden of proof than something that was not related to renewable procurement. So I'd like to ask you to supplement your earlier motion. If you can do that within ten days, that would be great.

- 1.) That the material it is submitting constitutes a particular type of data listed in the Matrix,
- 2.) Which category or categories in the Matrix the data correspond to,
- 3.) That it is complying with the limitations on confidentiality specified in the Matrix for that type of data,
- 4.) That the information is not already public, and
- 5.) That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.

The log and the context in the text of the Report demonstrate that each item logged above (except the last, which is not subject to D.06-06-066, and is addressed below) satisfies the foregoing categories 1-3.⁴ And, SG&E treats the subject information as confidential and has not published it to date. Finally, the data has been submitted with minimal redactions, and cannot otherwise be protected by aggregation.⁵

B. Publishing the detailed construction cost estimate would offend the public interest by increasing project costs.

The detailed construction cost estimate is not subject to D.06-06-066, which by its terms is concerned with electricity (more specifically, RPS) procurement. Ordering Paragraphs 3 and 13 of D.06-06-066 suggest that parties seeking to protect non-RPS data should assert a legal basis for protection and demonstrate:

.... facts showing the consequences of release. It must also show that aggregation, redaction, or other similar methods are inadequate to protect the data.

⁴ For convenient reference, SDG&E attaches the redacted pages in Appendix A hereto.

⁵ SDG&E notes that this logging and showing meets the prospective criteria set forth in Ordering Paragraph 13, item 3.) for future consideration in R.05-06-040.

Id., Ordering Paragraph 2. *See also*, Ordering Paragraph 13, item 3.). The presiding judge’s ruling asked SDG&E to address the criteria set forth in Ordering Paragraph 13.

Legal Basis: General Order 66-C categorizes as information that is “not open to public inspection,” those “reports, records, and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage” (General Order 66-C, §2.2(b)).

Consequences of Release: The sealed confidential material includes confidential capital cost estimates by SDG&E for the construction of the Sunrise Powerlink. Confidential treatment of this information would serve the public interest because access to SDG&E’s proprietary project cost estimates could give potential vendors an advantage in formulating bids for work or equipment related to the project. Disclosure of this cost information would set a floor, discouraging the submission of lower bids. Also, access to this information gives potential bidders an advantage in formulating bids for work related to the Sunrise Project. In sum, public availability of such information could hamper SDG&E’s ability to receive low-cost bids, and to build the project on a least-cost basis. Thus, not only would disclosure place SDG&E at an “unfair business disadvantage” as contemplated by General Order 66-C, but it would offend the public interest by increasing costs that will be the basis of transmission rates paid by CAISO consumers.

Less restrictive procedures: SDG&E submits that it has used the least restrictive process available to protect the information. SDG&E has published summary cost information in a table at p. V-9 of its Report. Moreover, it is willing to produce the redacted table to parties signing an appropriate non-disclosure agreement, and indeed, has

already done so in this proceeding.

C. The protected RPS material meets an elevated burden of proof for protection.

The presiding judge’s ruling references the Executive Summary of D.06-06-066, where it states “that information related to renewable energy procurement must meet a higher burden in order to be protected.” T. 191. The ruling requests “help in understanding how ... [renewable energy procurement has met a] more substantial burden of proof than something that was not related to renewable procurement.” *Id.*

SDG&E’s showing illustrates how D.06-06-066 requires a higher burden of proof. For RPS material, only data falling within the matrix may be protected. Arguably, even where a utility could show some compelling reason for protecting RPS-related information, if it falls outside a protected matrix category, it does not merit protection. This in of itself demonstrates the higher burden required by the decision. From the discussion and context in D.06-06-066, it appears that meeting the restrictive parameters of the Matrix itself, plus the more precise showings set forth in Ordering Paragraph 2, reflect the higher burden of proof the decision had in mind. In this case, where no party has challenged the confidential designations, there is no opportunity to consider whether, or to what extent, the “higher burden” language might play out in adjudicating such a challenge. SDG&E submits that, in this case, lack of a challenge in such an otherwise heavily contested matter, indicates that the public interest in protecting the few items at issue is manifest.

III.
CONCLUSION

For the foregoing reasons, and for those set forth in its original motion, SDG&E respectfully moves the Commission for an order directing that the market sensitive information appearing in the unredacted version of the Report, which has been redacted in the public version, shall continue to remain under seal and shall not be made accessible or disclosed to anyone other than Commission staff except pursuant to the Protective Order or on the further order or ruling of the Commission, the presiding judge, or the judge then designated as Law and Motion Judge.



E. Gregory Barnes
Attorney for
SAN DIEGO GAS & ELECTRIC COMPANY
101 Ash Street
San Diego, California 92101
Telephone: 619/699-5019
Facsimile: 619/699-5027
E-Mail: gbarnes@sempra.com

September 25, 2006

ATTACHMENT A

renewable resources within SDG&E's service area is expected to come from wind generation along the eastern edge of the SDG&E service territory. SDG&E estimates that future wind potential in the Crestwood area of its service area could reach 500 to 600 MW, however most of this potential will require new transmission infrastructure. Further, even with full development of the estimated potential in the Crestwood area, SDG&E will still need to acquire more than half of its renewable energy requirements from areas outside of San Diego County.

SDG&E received 308 MW of wind related offers in its 2004 RFO and another [REDACTED] of wind related offers in its 2005 RFO. The proposed location of these projects is in the Crestwood/Boulevard area which is located in the eastern portion of San Diego County. Results of SDG&E's 2004 RFO "least-cost, best-fit" analysis showed that four (4) projects that bid in that area all proposed to develop for costs that were economically attractive. However it was determined that a new 138 kV transmission line would need to be built to accommodate the delivery from the four proposed bidders at a cost of \$344 million. The cost of building the new 138 kV line for these four projects, when added to the projects' bid prices, rendered the projects uneconomical. In addition, further development of this area appears problematic since the 138 kV line would only have accommodated the projects currently bid, with the next project requiring additional upgrades or construction of another transmission line in the area. In any event, when the cost of the new 138 kV transmission line was added to the overall cost of the four bids, all four projects were eliminated from further consideration in this RFO.

SDG&E is currently in negotiations with [REDACTED] [REDACTED] area that have proposed a combined [REDACTED] in

development potential in the Imperial Valley area.¹ The majority of these resources will likely require new transmission if they are to be able to cost-effectively supply energy markets outside of the Imperial Valley area.

As shown here, a substantial portion of SDG&E's planned additions will depend upon development of new potential resources that are also dependent upon SDG&E's ability to economically access these resources through construction of new or upgraded transmission facilities.

3. SDG&E's 2006 TRCR demonstrates the development potential in Imperial Valley and Eastern San Diego County

As described above, SDG&E anticipates that transmission system upgrades will be required to accommodate the substantial quantities of renewable resources whether they are in or out of SDG&E's service territory. SDG&E's Transmission Ranking Cost Reports issued on September 9, 2005 (amended version) and March 15, 2006 ("TRCR") further substantiated this conclusion. The 2006 TRCR gives a good indication of the locations and amounts of renewable resources that are being considered by developers for submittal into SDG&E's 2006 RFO. The 2006 TRCR shows a potential for approximately 880 MW of bids from wind, biomass, geothermal, biofuels, wind and solar bids in the San Diego and Imperial Valley regions between now and 2010. Of this, 500 MW of wind is proposed in the southeastern portion of SDG&E's transmission system with an additional 360 MW proposed from various technologies proposed in the Imperial Valley area.

¹ SDG&E's 2005 Short-list includes offers for approximately [REDACTED]

SDG&E has made a number of recent filings with the Commission seeking approval of a number of contracts for new renewable energy and capacity.

On September 22, 2005, SDG&E filed Advice Letter 1727-E seeking Commission approval of three agreements resulting from the 2004 RFO. The Commission approved these contracts in Resolution E-3965 on December 1, 2005. SDG&E filed a second Advice Letter 1734-E on October 27, 2005 seeking approval for a fourth such agreement. The Commission approved the contract in Resolution E-3979. SDG&E filed a third Advice Letter 1795-E on May 22, 2006, seeking approval of a fifth agreement with Esmeralda Truckhaven Geothermal. This project also requires Supplemental Energy Payment funding from the California Energy Commission. Status of the CEC funding and the Commission resolution regarding approval of the contract are still pending. Of these projects, the Stirling Energy Systems (“SES”) and the Esmeralda Truckhaven Geothermal (“Esmeralda”) will be located in the Imperial Valley area of California. The Agreement with SES contemplates the purchase by SDG&E of up to 900 MW of new solar related energy from SES in three phases. Phase 1 consists of 300 MW scheduled for delivery in the [REDACTED] timeframe². Phase 2 project consists of an additional 300 MW in the [REDACTED] timeframe.³ SDG&E also has a right of first refusal for a third phase for another 300 MW phase. The third phase would commence deliveries in the [REDACTED] timeframe. Once developed, Phase 1 of the Stirling Solar Project will, by itself, constitute approximately 3.7% of SDG&E’s 20% renewable

² [REDACTED]

³ [REDACTED]

resource goal for 2010. Phase 2 would add another [REDACTED]. All phases of this project are contingent upon the construction of new transmission facilities. At a minimum, “gen-tie” facilities must be built to reach the transmission grid at any one of the Imperial Irrigation District’s (“IID’s”) system, the Imperial Valley Substation (“IV Sub”), or the Sunrise Powerlink.

Esmeralda proposes to construct a 25 MW geothermal facility in the Imperial Valley area of California [REDACTED]

[REDACTED] The project is expected to achieve commercial operation in 2010 and is also contingent upon the construction of new transmission facilities. At a minimum, “gen-tie” facilities must be built to reach the transmission grid at any one of the Imperial Irrigation District’s (IID’s) system, the IV Sub, or the Sunrise Powerlink. The Sunrise Powerlink will enhance the ability to economically transmit power from the project to the San Diego load center. These five contracts would increase the level of *committed* resources in SDG&E’s overall renewable portfolio to approximately 12.2% in 2010 and to approximately 17.5 % in 2014.

In addition to the contracts executed above, SDG&E’s 2005 RFO also contained a number of offers for additional renewable resources in the Imperial Valley area. SDG&E is negotiating with several of the developers at this time. Potentially, contracts with these developers could add an [REDACTED] resources, however, SDG&E cannot at this time predict whether negotiations will result in executed contracts.

Should negotiations not progress to contracts, SDG&E believes that these or other developers will continue to pursue the development of potential solar, geothermal and

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing
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COMMERCIALLY SENSITIVE, PROPRIETARY INFORMATION UNDER
SEAL, AND FOR A PROTECTIVE ORDER** on all parties identified in A.05-12-014
and A.06-08-010 on the attached service list by U.S. mail and electronic mail, and by
Federal Express to the assigned Commissioner(s) and Administrative Law Judge(s).

Dated at San Diego, California, this 25th day of September, 2006.



Joel Dellosa